GATT Safeguards and Voluntary Export Restraints: What Are the Interests of Developing Countries?

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Exports from developing countries are frequently the targets of trade protection to offset injury to domestic producers. A safeguard clause of the General Agreement on Tariffs and Trade (GATT), Article XIX, authorizes such protection, but voluntary export restraints (VERS), which are not authorized or controlled by the GATT, are often used in its place. A call for a "comprehensive agreement on safeguards" was one outcome of the 1986 Punta del Este ministerial meeting.

The spread of VERS is often taken to be a threat to the interests of developing countries. The costs of VERS to developing country exporters may have been overestimated, however, and as a consequence, developing countries may be at risk of conceding too much, perhaps in terms of a relaxation of the conditions of application of Article XIX, in an attempt to ban or directly control VERS. The central issue is the extent to which VERS are adopted to avoid invocation of Article XIX. If so, there is no valid case for developing countries to pay anything for a ban on VERS. A better course for them would be to press for more rigor in GATT articles used as threat, which would enhance their bargaining position in setting the conditions for VERS.

Successful exports from developing countries are often greeted by industrial countries with an increased level of protection. Of the various means employed to achieve this result, voluntary export restraints (VERS) are probably the most important. A VERS occurs when a government limits the export of some good from its territory to another country at the request of the government of that other country. Since VERS are bilateral agreements between states, they escape—or have so far escaped—the rules of the General Agreement on Tariffs and Trade (GATT).

In the context of the GATT, VERS are typically discussed under the heading of

1. In this article the term VERS will be used so as to include all related instruments and terminologies, such as orderly marketing agreements (OMAS) and voluntary restraint arrangements (VRAs). VERS sometimes appear as industry-to-industry agreements, without the explicit approval of the sponsoring governments. Such arrangements can give rise to acute problems of definition, but these difficulties are not central to the argument of this article.

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"the safeguard issue." The GATT contains a safeguard clause—Article XIX—which permits a country to increase its level of protection against a class of imports that increases so rapidly as to cause or threaten serious injury to domestic producers (for a valuable discussion of the legal aspects of Article XIX, see Jackson 1986). In circumstances in which Article XIX might apply, however, the governments of developed countries have demonstrated a preference for the use of VERS.

A major element of the safeguards issue is that VERS have largely replaced the use of GATT Article XIX. Wolff (1983) reports a GATT Secretariat study showing "63 cases where those 'other' safeguard measures have been used since 1978 or were still in effect during this period, compared with only 19 actions notified under Article XIX." He comments that the ratio of VERS to Article XIX actions probably is "far greater" than three to one, since, as there is "no obligation to notify the taking of the extralegal measures, presumably not all are known."

This is widely taken to be a problem. The Ministerial Declaration on the Uruguay Round, issued from Punta del Este, makes clear the importance attached to the subject, most explicitly in the statement that "a comprehensive agreement on safeguards is of particular importance to the strengthening of the GATT system and to progress in the multilateral trade negotiations" (p. 8).

Two broad approaches to a resolution of this problem have been suggested. One is reform of Article XIX and the other is direct action against VERS. The area however, is filled with pitfalls.

Developing countries have a very clear interest in the form of any comprehensive agreement on safeguards. This article views this difficult terrain from the standpoint of developing countries.

Developed and developing countries have different interests in safeguards and Article XIX. The heaviest potential users of safeguards are likely to be developed countries. The potential targets of safeguard applications are countries with a rapidly changing structure of exports, and these, in turn, are likely to be countries with a rapid rate of economic growth. A number of developing countries are in this class and all developing countries presumably aspire to it.

Developed countries therefore are likely to seek formulations of Article XIX that provide many rights to importers and impose few constraints on the exercise of those rights. Developing countries, against whom those rights would probably be used, are likely to prefer an Article XIX that protects exporters and that therefore provides only minimal rights for importers and places severe restrictions on the invocation of such rights.

The presence of VERS in the world trading system, however, creates a more complex problem for developing countries. The problem emerges from the proposition that developed countries prefer VERS to Article XIX because the condi-

2. This is a statement about the revealed preferences of governments, not about the actual economic interests of their constituents. From the latter point of view, the case for a safeguard clause (and particularly one that authorizes tariffs and quotas) is not strong.
tions of application of the present Article are so restrictive (in ways that will be
explored later on). If that is so, a possible means of limiting the spread of VERS—
and possibly of eliminating them altogether—is to relax the conditions of applica-
tion of Article XIX so as to reduce the incentive for developed countries to use VERS.

This argument has been put forward by the European Economic Community
(EEC), which pressed very hard for an agreement on safeguards, though without
success, in the Tokyo Round (1973–79). Developing countries came very close
to accepting such a major relaxation of Article XIX, which was urged upon them
by observers with impeccable antiprotectionist credentials (for example, Frank
1981). In the event, however, no agreement was reached. Since that time, the
fundamental importance of the problem has been restated at each GATT meeting
along with a concession of a total inability to offer any solution to it. (For a
summary of the substantive issues, see UNCTAD Secretariat 1984).

In the absence of VERS, relaxation of Article XIX would clearly be contrary to
the interests of developing countries. That they should nevertheless have con-
templated acceptance of such a relaxation is testimony to the fears aroused by
the spread of VERS and implies a belief that developing countries should be
prepared to pay a high price to rid the trading system and themselves of VERS.
That belief is not well founded, for reasons that I shall later explore.

Whatever developing countries ought to be willing to pay, however, the Punta
del Este meetings seemed to suggest that they would not be required to pay
anything at all in terms of a weakened Article XIX, or any other concessions.
The outcome of the Punta del Este meeting seemed to signal a movement away
from the old battlegrounds of the Tokyo Round and to open the possibility that
VERS could be negotiated out of existence.

I. THE SAFEGUARDS ISSUE AFTER PUNTA DEL ESTE

The primary basis for believing that an agreement to ban VERS is now possible
lies in the section of the Ministerial Declaration dealing with Standstill and
Rollback (Section C, pp. 5–6). Under the subheading “Rollback,” each particip-
ant agrees “Commencing immediately and continuing until the formal comple-
tion of the negotiations . . . to apply the following commitments”:

(i) that all trade restrictive or distorting measures inconsistent with the provi-
sions of the General Agreement or Instruments negotiated within the
framework of GATT or under its auspices, shall be phased out or brought
into conformity within an agreed timeframe not later than by the date of
the formal completion of the negotiations, taking into account multilat-
eral agreements, . . . reached in pursuance of the objectives of the negotia-
tions.

(ii) there shall be progressive implementation of this commitment on an equi-
table basis in consultations among participants concerned, including all
affected participants. This commitment shall take account of the concerns
expressed by any participant about measures directly affecting its trade interests;

(iii) there shall be no GATT concessions requested for the elimination of these measures.

Section D of the Ministerial Declaration contains an explicit call for an agreement on safeguards. Its language is blander than that of the sections quoted above but it does appear to provide a basis for hopes of progress on safeguards.

There are, however, three reasons for caution in accepting this conclusion. The first lies in the simple fact that safeguards were high on the agenda of the Tokyo Round—without any subsequent reform. The supporters of any one direction of reform in that Round appear to have preferred the present form of Article XIX to compromises that would give partial effect to the reforms suggested by others. Thus, like a knot between two equally matched tug-of-war teams, Article XIX remained in place.

A report in the Financial Times of September 22, 1986, illustrates the second reason for caution:

Mr. Clayton Yeutter, the United States Trade Representative immediately spread confusion over the scope of the standstill commitment [which was couched in exactly the same terms as the rollback agreement] by telling journalists just before he left that it did not apply to so-called “grey-areas” of protectionism.

The “grey-area” refers to bilateral agreements such as voluntary export restraints or orderly marketing arrangements by which governments circumvent GATT rules without actually breaching them.

The problem raised by Yeutter’s reported words presumably lies in the delineation of the “trade restrictive or distorting measures inconsistent with the provisions of the General Agreement” which participants have agreed to remove. The term must cover measures which the General Agreement expressly bans (for example export subsidies). The doubt raised by the Yeutter comment, however, is whether the agreement applies to measures which the General Agreement does not authorize, but which it does not expressly ban. Yeutter’s words suggest that he places VERS in this category. The actual words of Articles XI and XIII seem to leave no room for doubt that VERS are banned. According to paragraph 1 of Article XI: “No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licenses or other measures, shall be instituted or maintained by any contracting party . . . on the exportation or sale for export of any product destined for the territory of any other contracting party.” And paragraph 1 of Article XIII forbids any “prohibition or restriction . . . on the exportation of any product . . . unless the exportation of the like product to all third countries is similarly prohibited or restricted.”

The problem with inferring the illegality of VERS from this is that it is ques-
tionable whether these Articles were framed with VERS in mind. As an historical matter, it is arguable that they were intended to protect importing countries against the disruptive actions of exporting countries. But importing countries request VERS. The issue becomes one of legal philosophy: that of the extent to which the application of GATT law should be controlled by the intentions of the framers of the GATT, rather than the words in which they expressed those intentions.

Nevertheless, in the light of Yeutter's words, it would not be sensible for developing countries to assume that the VERS problem is solved without cost to them and that an automatic outcome of the MTN will be a ban on VERS. Perhaps that will be the outcome. Nevertheless, the conjunction of Yeutter's statement with the Punta del Este Declaration suggests the possibility that a more complex bargaining position is being established, in which action on safeguards will be conditional on concessions elsewhere. (A similar view of the bargaining costs to developing countries is expressed in Bhagwati's article in this issue.)

The third reason for caution is that there are major technical difficulties in organizing an effective ban on VERS in the GATT framework. The central problem is enforcement.3 The GATT is analogous to a system of civil law. It provides legal rights that constitute a basis for one contracting party (CP) to make a claim against another. Initiation of legal action in pursuit of those claims is left to CPs. As the GATT is presently constituted, there is no equivalent of a police power to make indictments on the basis of breaches of the GATT rules. That some practice of a CP fails to conform to the GATT is neither here nor there unless another CP brings a complaint about the practice in the GATT.

No formal complaint against a VERS has ever been lodged with the GATT. Doubt about whether VERS contravene GATT rules might explain this, and such doubt could in principle easily be resolved. A more important problem, however, may be a lack of CPs who are willing to argue that they have been injured by a VERS.

The two governments who are parties of a VERS are not candidates for the role of injured plaintiff (unless the exporter complains of coercion—but then his complaint will be about coercion, not about the VERS). The question therefore is whether a third country has grounds for complaint.

Third countries who import the good affected by the VERS will obtain it more cheaply as an outcome of its diversion from VERS-protected market. That is an economic gain, although governments of countries which contain domestic import-competing production will not welcome it. Whatever the assessment of their position by third party importers, however, there is no clear basis for them to suppose that they are worse-off as a result of a VERS than if a GATT-approved

3. The problem of enforcement is very much complicated by difficulties in identifying VERS, which take many forms. Arrangements between firms or industries, for example, may be sponsored by governments but are much less easily identified as VERS than direct agreements between governments themselves. Moreover, as Jackson (1986, p. 41) notes, the GATT does not apply to the actions of private companies.
measure (for example, an application of Article XIX) had been used to restrict imports. Accordingly, even in terms of the political costs of cheaper imports, third party grounds for complaint are limited.

Third countries who export a good that is subject to a VER in a competitor exporter will lose as a result of a lower price outside of the restricted market, but will gain as a result of the higher prices in the market to which the VER applies. Overall, they might either lose or gain as compared with their position prior to the VER (see, for example, Hindley 1979). But had an Article XIX action been used instead, they would have been even worse off. Article XIX actions limit access to the restricted market and do not produce a higher price for exporters to that market.

Neither of these groups of CPS, therefore, has obvious ground for complaint. A VER may be a crime without a victim who is eligible to complain in the GATT. One way to remedy this would be to introduce GATT law into the domestic law of CPS, so that private citizens would have a right to bring complaints against their own government. Buyers of the restricted good in the importing country are unambiguously worse off as a consequence of a VER and to provide them with rights to remedy that situation therefore has much to be said for it. This course, however, is unlikely to be politically feasible within the time span of the Uruguay Round.

A second possibility, to provide the GATT Secretariat with the power to indict CPS who infringe GATT rules, also lacks feasibility. Moreover, by placing the Secretariat in a political role, and making it a potential target for political controversy, it may in the long run pose a more serious threat to the effectiveness of the GATT than VERS.

To deny the possibility that satisfactory solutions can be found in the course of the Uruguay Round would be foolish. It would also be foolish, however, to rely on the appearance of such solutions—and upon the degree of consensus and the goodwill necessary to make them effective. It therefore behooves developing countries to consider the costs to them of the VER system and the value to them of the various possible reforms of Article XIX. Their hesitation in the Tokyo Round suggested that they might be prepared to make large concessions in terms of relaxing the conditions of Article XIX to halt and reverse the spread of VERS—should that be their attitude in the Uruguay Round? To approach that question, it is useful to pursue further than was done in the Tokyo Round, the idea that Article XIX and VERS are interdependent.

II. THE RELATION BETWEEN ARTICLE XIX AND VERS

A central issue in the political economy of VERS is the extent to which they are in fact voluntary. The possibility that they are voluntary arises from the fact that the restriction on the quantity exported is likely to raise the price of the remaining exports to the restricted market. The higher profit per unit sold implies the possibility that the exporting country will gain as a result of a restraint, and
therefore the possibility that its government will be willing to voluntarily restrain exports. 4

These rents make VERS a very expensive instrument for importing countries, as many studies have demonstrated (for example, Tarr and Morke 1984; and Greenaway and Hindley 1985). From this point of view, the most obvious question about VERS is not whether or why exporting countries accept them, but why importing countries ask for them. That question will be discussed below.

The more immediately relevant aspect of the issue is that one alternative to a VER as a means of blocking awkward imports is Article XIX; hence, Article XIX bears on the negotiation of a VER. Were the government of an exporting country to refuse to limit exports, an alternative course of action open to the government of the importing country is to invoke Article XIX. The government of an exporting country will reject a VER that imposes upon it costs greater than it expects to sustain from a successful Article XIX action (unless it is subjected to some additional threat). The government of an importing country will attempt action under Article XIX unless it can achieve its objectives at a lower cost by negotiating a VER.

It follows from this that the VER system and reform of Article XIX cannot sensibly be discussed in isolation from one another. The existence of the VER system will affect the outcome of any reform of Article XIX and the scope of the VER system depends upon the structure of Article XIX. For example, the proposition made in the Tokyo Round, that VERS might be effectively eliminated by a sufficient relaxation of the conditions of application of Article XIX, probably is correct. What was less clearly stated in the safeguard debates of the Tokyo Round is that such a reform is unlikely to be in the interests of the developing countries. The reform would eliminate the rents received by exporting countries when they agree to a VER. Moreover, and possibly of more importance, the reform would reduce the costs to developed country governments of safeguard actions. It thereby plausibly would increase their number.

If the alternative to VERS was more open access by developing countries to the markets of developed countries, the loss of VER rents might not weigh heavily in a decision as to which system to choose. The alternative on offer in the Tokyo Round, however, is likely to have entailed the loss of VER rents and less market access.

How could such an outcome be in the interests of developing countries? One argument to this effect derived from the threat that VERS were said to pose to the "credibility" of the GATT itself, and therefore to the GATT's potential as a defender of the interests of smaller countries.

That two "safeguard systems" exist side-by-side, one authorized by the GATT and the other not, and that the unauthorized system is more extensively used

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4. The conditions for an exporter to gain are worked out for a variety of circumstances in Hindley (1979). An alternative explanation of why an exporter might prefer a VER to an Article XIX action is presented in the "porous-protection" model of Bhagwati (1987).
apparently is sufficient to persuade some commentators that major reform of Article XIX is needed. Yet out-of-court settlements are commonplace under the civil law, and that fact is not typically taken to suggest that the civil law is in major crisis or that its immediate reform is essential. Nor does anyone suppose that out-of-court settlements will fail to reflect the beliefs of the parties as to what the judgment of a court would have been.

Even though a case does not go through the formal court system, its outcome reflects the state of the law. Moreover, all of the disputing parties presumably feel themselves to be better off with an out-of-court settlement than if the case had come to trial.

This seems to be a possible basis for thinking about the VER system. It would not be an appropriate basis, however, if VERS are not truly voluntary.

A second argument for attempting to bring VERS within the GATT structure derives from a concern that small countries in particular are coerced by more powerful trading partners into yielding “voluntary” export restraints that are voluntary in appearance only and are in fact seriously adverse to the interests of the small country. This may be true. If so, however, it is this fact that makes a case against VERS, and not their mere existence or number or proportion relative to actions under Article XIX. If this was the foundation of proposals to weaken Article XIX so that it is not worthwhile for importers to seek VERS, advocates of that position supplied very little evidence on a basically factual question. It would have been useful to have instances of coercion, and information as to the coercive threats that produced them.

“Coercion” and “voluntary” are words that conceal conceptual problems. In the present context, however, a clear distinction can be made between threats involving actions that would be legal under the GATT and threats of actions that are not legal under and would not be authorized by the GATT.

For example, suppose that the only consequence of an exporting country refusing a VER is that the importing country will apply Article XIX, and that the circumstances are such that it would be legally entitled to do so. In that event, the exporting country accepting a VER is coerced into it, in the sense that it would prefer to continue to export without restrictions, rather than face either an Article XIX action or a VER. Nevertheless, it is also true that the exporting country was in effect offered a choice between a VER and an Article XIX action and accepted the former. The word “voluntary” will be used here to describe the choice of a self-administered export restraint when the alternative is an action that is legal under the GATT.

Article XIX is not the only such threat available to importers, however. Dumping and countervailing actions are reportedly (and plausibly) the most common basis for threats made in the course of VER negotiations. But importers might offer threats that have nothing to do with trade or any issue that falls

5. Curiously, however, the position that the mere existence of VERS threaten the viability of the GATT is sometimes taken by lawyers—for example, Wolff (1983).
within the competence of the GATT. Yoffie (1983) provides a valuable discussion of VER bargaining. His account strongly suggests that matters not inherently connected with trade do enter the negotiations—for example, military and economic aid (see especially pp. 145–154).

Not only importers can make use of retaliatory threats, however. A recent instance is provided by the Turkish government's public linkage of expanded U.S. quotas for Turkish textiles and the renewal of U.S. bases in Turkey. Even accepting that extra-GATT threats enter the VER negotiating process, therefore, there is a question as to whether they lead to bargains that are more or less favorable to exporters. Yoffie notes, for example, that "in exchange for the textile agreement with some amendment of America's terms, the Koreans extracted 776.3 million dollars worth of P.L. 480 [food aid] commitments" (1983 p. 151). Moreover, Hong Kong, which has accepted no VERs other than those coming under the Multifibre Agreement, seems to have been able to withstand the threats of importers without suffering major harm.

Other exporters may possess fewer bargaining chips. Some "VERS" may derive from the threats by importers of actions that would not be legal within the GATT. That is very far from accepting, however, that the existence of VERs necessarily or even strongly implies that importers have exercised such coercion.

There are two different theories of VERs. One emerges from the proposition that VERs result from threats of action that are not authorized by the GATT and the other from the proposition that they are voluntary (in the sense that the exporter prefers to accept a VER rather than any other action that is legally available to the importer). These theories yield different assessments of the desirability of particular solutions to the safeguard problem. If coercion is widespread in the negotiation of VERs, so that exporting countries are forced into arrangements that are inferior to those that would emerge from GATT-authorized measures, there is a clear basis for attempting to use the GATT as a counterweight. This case is seriously weakened, however, if the typical alternative to a VER is an action that would be authorized by the GATT.

III. THE SIMPLE ECONOMICS OF VOLUNTARY EXPORT RESTRAINTS

Exposition is simplified by initially treating Article XIX as the only GATT-legal alternative that might emerge as a threat in the course of VER negotiations. Thus, if an exporting country does not grant a VER, the importing country will take action under Article XIX. Then the standard argument from voluntary exchange suggests that an exporting country government will accept a VER only if it expects to be at least as well off with the VER as with the Article XIX action.7


7. There is, of course, a major problem of how costs and benefits will be defined by members of governments negotiating on behalf of private citizens. “Will reject” must therefore be treated as a statement about a model, not about the real world. It is the actions open to governments that are important in the present context, however.
Either a VER or an Article XIX action will reduce the output of the exporting industry below what it would otherwise have been. Either instrument will therefore reduce the returns to factors of production employed in the industry. A VER, however, provides pecuniary compensation where an Article XIX action does not. If a country’s exports are to be restricted to some level, the country cannot be worse off (and may be better off) if the restriction is achieved by a VER rather than by an Article XIX action.

An Article XIX action that conforms with the GATT cannot discriminate between exporters, and so will affect all other exporters. Even if no other exporter is affected by a VER, however, it is still true that the restricted exporter cannot be worse off with the VER than with an Article XIX action that cuts his exports to the same level. This is because an Article XIX action pushes the supplier back along his supply curve, while a VER achieves the same level of restriction by moving him up along his demand curve to a higher per unit price. So long as the relevant demand curve is above the supply curve, a supplier will prefer any given level of restriction of exports to be achieved by a VER.

When a VER restricts a country’s exports to a lower level than an Article XIX action, the circumstances in which the VER will provide an exporting country with the same level of welfare as the Article XIX are less easy to define. The VER in that event will reduce the demand for factors of production of the exporting industry to a greater extent than would the Article XIX alternative, so that they will require compensation to remain at the same level of welfare. The price of exports may rise as a result of the restriction, however, possibly providing the means for compensation.

It is important, however, to be clear as to the questions at issue. If export restraints are voluntary in the sense defined here, the exporter will evaluate the effects of a VER that cuts exports by more than an Article XIX action, and based on that assessment will accept or reject the VER. If an exporting country anticipates that a suggested VER will make it worse off than the Article XIX restriction, it will reject the VER and opt for Article XIX. (And, of course, the importing country may return to the suggested level of exports but with an additional side payment, or perhaps a commitment to obtain VERS from other exporters also).

A good deal of discussion of VERS appears to be based on an implicit assumption that if VERS were not available, then importing country governments would do nothing to solve what they perceive as their problems with import-competing industries. That does not seem a plausible hypothesis.

In certain cases, however, the requirement of Article XIX that the action be taken against all exporters might make it too politically embarrassing for the importing country government to apply the Article. In that event, the relevant alternative to the VER is the status quo. To avoid the awkwardness that would arise from use of Article XIX, importing country governments may be prepared to pay enough for a VER that exporters are better off absolutely rather than merely relative to the Article XIX alternative. Exporters, of course, would be
prepared to accept less than this if they could be persuaded that an Article XIX action was possible. Nevertheless, if the exporting country correctly assesses the situation, it might obtain a VER that improves its welfare. So far as I know, only one study of the impact of vers on exporters is available. The results of Tarr (1987) suggest that steel exporters restricted by vers are better off than they would have been in the absence of vers.

To the extent that vers are voluntary, the case for GATT surveillance is weakened. A case for surveillance cannot then easily be based upon the effects on the parties to the agreement. If the parties to a ver prefer that arrangement to any action authorized by the GATT, what virtue would lie in an effort to force them into GATT-approved action?

This is not to say, of course, that there are no losers from a ver in the countries directly involved. In particular, buyers in the importing country are worse off. They pay the rents that make the restraint acceptable to exporting country governments. A difficulty for the voluntarist theory, therefore, is to explain the revealed preference of the governments of importing countries for vers.

IV. THE DISUSE OF ARTICLE XIX: SELECTIVITY AND COMPENSATION

UNCTAD (1984) provides an excellent summary of the substantive issues regarding safeguards as they were viewed prior to the Punta del Este meetings. Its succinct conclusion is worth quotation: “The issues of discrimination and compensation remain central to the GATT discussions. Discussions on other aspects of the 'safeguards' system involve second-order issues, and can well have the effect of drawing negotiating energies and resources away from these two key issues” (p. 9).

Some governments of developed countries claim that their neglect of Article XIX is due, first to its requirement that exporters affected by Article XIX actions be compensated and, second, to the requirement that Article XIX actions must apply to all exporters of a particular product, which means that “disruptive” exporters cannot be singled out for special treatment. These developed country governments often go on to suggest that a relaxation of these requirements would lessen their temptation to seek vers.

The compensation provisions of Article XIX are contained in Paragraph 3(a), which permits affected exporting countries to increase their protection against some export of the country applying Article XIX, or to claim from the applicant country an equivalent compensatory concession. This leads to an evident cumbersomeness when several exporting countries are affected by an Article XIX application. In addition, the provisions are likely to increase the domestic political costs of using Article XIX—an increase in protection to one domestic industry must be balanced by costs imposed on other domestic industries.

The second common explanation for the disuse of Article XIX, that it does not permit discrimination between different sources of imports, is sometimes
connected with the compensation requirements of the Article. It is said that
discrimination between exporters provides possible means of avoiding arduous
negotiations when a number of different countries are sources of the relevant
import and all exercise their right to equivalent concessions.

Beyond that technical problem, however, lies a more important political one.
Nondiscrimination means that action taken under Article XIX must be taken
against powerful trading partners as well as against weaker ones. Thus, for
example, using Article XIX, the United States and the European Community
(EEC) would have to act against one another’s exports when an expansion of
competitive imports from a newly industrializing country has “created” the
problem. Tension in a central political relationship may be threatened as a result
of economic events in a relationship that may be politically peripheral.

Seen from another vantage point, however, the fundamental problem lies in
the decision to protect the import-competing industry. This may explain why the
most common defense of selectivity lies neither in the technical problem of
equivalent tariff adjustment nor in the political problems of relations between
trade superpowers. The most common defense lies in the ethical proposition that
importing country governments have a right to prevent “market disruption” (a
term used by proponents of VERS and other protective devices to describe the
impact of new and dynamic exporters on established suppliers). From this dubious
foundation, the right of importing country governments to take action
against “disruptive” imports without reference to the exporting country govern-
ment is deduced. (Hindley 1979 gives a fuller discussion of this contention.)

Voluntary export restraints were defined above as the exporting country’s
acceptance of a VERS rather than an Article XIX action. This voluntarist view is
used below to elucidate the issues of selectivity and compensation from what
may be an unfamiliar perspective.

Selectivity

In the Tokyo Round, the European Community tried very hard to obtain
modifications of Article XIX so that selective safeguards could be imposed at the
discretion of importers (as already noted, its representatives at one point de-
scribed such a reform as the “sine qua non of any overall agreement”). The
rejection of this proposal was due to a failure to obtain agreement on how, or
whether, the discretion of importers was to be constrained.

In the Tokyo Round, it appears that agreement was almost reached on the
introduction into Article XIX of consensual selectivity—that is, an amendment
to permit an importing country government to discriminate against a particular
exporter but only if that exporter agrees to it. Acceptance of the reform was
apparently prevented by the insistence of the EEC that in specified circumstances,
selectivity should be permitted without the agreement of the exporter. The quid
pro quo offered by the EEC appears to have been the inclusion in the amended
Article XIX of a specified limited duration for nonconsensual action; a commit-
ment on the quantitative impact of the application (for example, that the level of imports from the country to be discriminated against would be maintained); and the establishment of a Committee within the GATT for the settlement of disputes and the surveillance of Article XIX actions.

From a voluntarist standpoint, the legal and procedural protection offered in this package has little value. It is better designed to appeal to those who believe that extra-GATT coercion of exporters by importers plays a major role in the negotiation of VERS (this belief, incidentally, does not seem to sit comfortably with the importance given to Article XIX reform by the EEC: if exporters are so easily forced into VERS, why should reform of Article XIX be a major issue for importers?)

Even on the view that VERS result from extra-GATT coercion, however, very careful examination of the detail of what is offered is essential. A central element in such an examination must be the means provided to the GATT Committee to establish its authority over VERS. Without some means of achieving such control, the rest of the package favors importers.

The options of importers would improve in the class of cases for which they were authorized to take selective action (which would inevitably expand without either a very careful definition or a very determined Committee, or both). For some period, importers would be able to apply Article XIX selectively without reference to the exporter (and, also, if the second major EEC suggestion were accepted, without compensation to the exporter). At the end of that period, the importer would again have the same options as at present.

For exporters, Article XIX applications would become more damaging. For some class of cases and for some period, they would have no legal basis for negotiation and would, therefore, be worse off than at present. After that period exporters would face the same situation which they now face.

Were the Committee unable to control VERS, the amendment would cause a deterioration in the negotiating position of exporting countries. One effect of that deterioration would be to improve the terms on which importers could obtain VERS. That, in turn, would offset the attractions of using the new Article XIX.

Compensation

Broadly speaking, there are two relevant alternatives to the present provisions for compensation of Article XIX. The first is to eliminate them without replacement—to accept the EEC idea that when a safeguard action conforms to the Article XIX rules, the applicant should not be required to pay a "penalty."

The second possibility is to construct a rule for monetary compensation to exporters affected by an Article XIX action, either as a replacement for the current provisions or as an institutionalized alternative to them. The possibility will not be discussed here. Seen from this standpoint, VERS provide pecuniary
compensation to exporters. There is an obvious question of whether any simple and negotiable rule is superior to VERS for that purpose. 8

The existing provisions of Article XIX provide a right to affected exporters to raise their duties on some good of interest to the Article XIX applicant. This is consistent with the GATT orthodoxy of maintaining an equality of concessions. On that view, the withdrawal of a concession under Article XIX must be matched by an equivalent alternative concession offered by the Article XIX applicant or withdrawn by an affected exporter. The retaliation provisions therefore further whatever ends are served by first-difference reciprocity.9

Introduction of the idea of penalty, however, abandons GATT orthodoxy. It fastens on the fact that the provisions make access to Article XIX more expensive. In doing so, however, it raises the issue of whether the compensation or retaliation provisions of the Article serve some function other than maintenance of first-difference reciprocity.

In fact, it seems clear that they do. Use of Article XIX damages the interests of persons outside the applicant country—for example, those who have invested in productive equipment in affected exporting countries. That being so, there is a clear case for ensuring that the Article is not used for trivial purposes. One means of achieving that is to ensure that application of Article XIX is accompanied by substantial costs upon the applicant. The complaints of importing country governments suggest that the existing retaliation provisions achieve that.

Suppose that Article XIX were amended by eliminating any requirement to reequalize the balance of concessions. Thus, an Article XIX applicant would neither be required to offer an equivalent concession to the one withdrawn nor to accept the loss of an equivalent concession by affected exporters. Clearly, this reform would make Article XIX more attractive to importers. Hence, it might be expected to produce the same two primary effects as would introduction into the Article of selectivity: (1) it would cause substitution of Article XIX actions for VERS and hence would increase Article XIX actions relative to VERS; and (2) insofar as the costs of Article XIX actions for importers are a determinant of the bargains available to exporters who have been asked for VERS, it would lead to a shift of bargaining power from exporters to importers.

Neither of these outcomes is desirable from the standpoint of developing countries. The first represents a substitution of an instrument which generates no rent for exporters for one that does. The second implies a reduction in the rents generated for exporters by VERS. A possible offset to those losses lies in the implication that a higher proportion of safeguard actions would come within the

8. Deardorff (1986) suggests global quotas with the transferrable rights to import allocated to exporters in accordance with a market share rule. Earlier, Bhadwati (1977) had also proposed an alternative reform of Article XIX.

9. Hindley (1986) discusses the function of first-difference reciprocity. Jagdish Bhagwati (Bhagwati and Irwin, 1987) appears to be the inventor of this useful term—which, when absolute reciprocity figures so largely in discussion of commercial policy, makes possible a concise discrimination between concepts often confounded.
The arguments made in this article suggest that that has a dubious value. Since the reform would reduce the costs to importers of safeguards, it would probably increase the total number of safeguard actions. It is therefore possible that it would increase the proportion of total safeguard actions within the GATT and increase the total number of safeguard actions falling outside of the GATT.

Selectivity and Compensation from a Developing Country Perspective

The different implications for policy of voluntarist and nonvoluntarist views of VERs emerge sharply from a focus on selectivity and compensation. A nonvoluntarist position suggests that developing countries should concede relaxations in the conditions of Article XIX in the hope of limiting the threat of VERs. A voluntarist position suggests the reverse. It suggests that developing countries should press for tighter and tougher conditions of application of Article XIX.

A consequence of such a reform of Article XIX might be that a higher proportion of safeguard actions took the form of VERs. That is a cost from a nonvoluntarist standpoint. From a voluntarist standpoint, however, if exports are to be restricted, it is better that they should be restricted by a VER than by an Article XIX action. To tighten the conditions of application of Article XIX improves the bargaining position of developing countries asked for VERs. To make Article XIX more expensive for importing countries also makes VERs more expensive. It is therefore likely to reduce the number of safeguard actions of all kinds.

That a package that amounts to an overall toughening and tightening of Article XIX can be negotiated in the Uruguay Round may not be very likely. Nevertheless, this analysis suggests that before accepting any relaxation of Article XIX, developing countries should think very carefully about what they are getting in return.

Developed country protectionism is not a good thing, whether viewed from the standpoint of the developing countries or from that of the developed countries themselves. Nevertheless, VERs can be viewed as an opportunity for developing countries to make the most of the protectionist actions of the established industrial countries. Certainly the mere presence of VERs in the world trading system should not scare developing countries away from pursuit of their natural interest in tightening the conditions of application of Article XIX.

V. Other Threats of Actions Legal under the GATT

The assumption that Article XIX is the sole source of threats of GATT-authorized action that might emerge in the course of VER negotiations has been useful for two reasons. First, it simplifies exposition. Second, it permits the argument to be presented against the familiar background of the safeguard issue. In fact, however, Article XIX is not the sole source of GATT-authorized alternatives to VERs.

The argument based on the Article XIX alternative, however, generalizes to any other alternative that would be legal under the GATT. Insofar as the parties
to a VER regard it as superior to the GATT action, it is difficult to see that there is a case for attempting to force them to accept the GATT action. If the arrangements that are reached in the light of the GATT alternative are less than satisfactory to exporters, then the appropriate remedy is to tighten the GATT alternative.

Thus, for example, if developing countries feel that they are being forced into unduly restrictive VERs by the threat of countervailing or antidumping actions from importers, their attention would be better focused on the rules for antidumping and countervailing actions than upon VERs. To ban VERs—even if such an act could be agreed and could be effective—would still leave developing countries facing the inappropriate rules for dumping and countervailing actions. To ban VERs would also remove the possibility of reaching an arrangement that developing countries preferred to the operation of those rules.

VI. Conclusion: Developing Country Objectives in the MTN

In thinking about safeguards, and the interests of developing countries in their reform, two pitfalls have not always been avoided. The first pitfall is to treat a limitation on VERs as though it is tantamount to a limitation on protectionism in developed countries. The second is to overstate the threat that VERs pose to the interests of developing countries.

Regrettably, a limitation on the use of VERs may simply cause the substitution of alternative protective instruments for VERs. The effects of such a substitution on the economic welfare of developing countries obviously depends upon the alternative form of protection. In view of the call of the Punta del Este Ministerial Declaration for bringing “trade restrictive or distorting measures inconsistent with the General Agreement . . . into conformity” with the General Agreement, however, one substitution that seems especially relevant is that of Article XIX actions for existing VERs. There are good grounds for skepticism that such a substitution would be in the interests of developing countries.

The point may have special relevance in the context of discussions of the safeguard issue in the Uruguay Round. If some move toward control of VERs is made, it is not impossible that it will be accompanied by suggestions that renunciations of VERs by the developed countries would be facilitated by a relaxation of some of the conditions of application of Article XIX. Developing countries should assess the detail of any such suggestion very carefully indeed. A relaxation of Article XIX worsens the substitution problem. The argument presented here suggests that developing country interests might be better served by a tightening of the conditions of application of Article XIX without formal control of VERs rather than by control of VERs accompanied by a relaxation of Article XIX.

The second pitfall is to be overimpressed by the notion of VERs as a threat.10

10. Bhagwati's (1987) porous protection model suggests the same conclusion, though on different—but not incompatible—grounds.
Developed country protectionism is a threat to the interests of developing countries; but no action on safeguards in the GATT will remove that threat. VERS may offer developing countries their best means of making the best of the current sad state of developed country trade policy.

References